

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

EDWARD AND JOANN AGOSTINELLI,

Plaintiffs,

v.

**FIFTH THIRD BANK, FIFTH THIRD
MORTGAGE COMPANY, TRACKSURE
INSURANCE AGENCY, INC., A DIVISION
OF ASSURANT, INC.; EQUIFAX
INFORMATION SERVICES, INC.;
EXPERIAN INFORMATION SOLUTIONS,
INC., AND TRANSUNION, LLC,**

Defendants.

CIVIL ACTION NO. CV-10-294-CG-B

ASSURANT INC.'S MOTION TO DISMISS

COMES NOW Defendant, ASSURANT, INC. ("Assurant") by and through its undersigned counsel, pursuant to Rules 8(a)(2) and 12(b)(2), (6) of the Federal Rules of Civil Procedure, and moves the Court to enter an order dismissing all of the claims against Assurant in this action with prejudice. As grounds in support of its motion, Assurant states the following, to-wit:

1. Plaintiffs' complaint must be dismissed because it fails to meet the pleading requirements of Fed. R. Civ. P. 8(a)(2) and *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. ___, 129 S.Ct. 1937 (2009).

2. Plaintiffs' complaint must be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) because it fails to state a claim against Assurant upon which relief may be granted.

3. Plaintiffs have no standing to bring any claims against Assurant, as there is no relationship between Plaintiffs and Assurant, and none has been alleged.

4. Plaintiffs' complaint must be dismissed because Assurant has been unduly prejudiced and burdened by undue delay, laches, and waiver since the transactions made issue in the complaint appear to have occurred over three (3) years before the filing of the complaint against Assurant, now leaving Assurant only three (3) months for discovery and seven (7) months to prepare for trial. [Doc. 10: Scheduling Order with discovery closing in December 2010 and trial set for June 2011].

5. As to Assurant, specifically, to the extent Plaintiffs have purported to sue Assurant as a separate and independent defendant apart from TrackSure, there are no specific claims that have been or can be alleged against Assurant. Plaintiffs acknowledge this fact by naming TrackSure as a "division" of Assurant, while at the same time suing TrackSure in its corporate name of TrackSure Insurance Agency, Inc., an indirect subsidiary of Assurant. Since Assurant is simply a parent company of TrackSure, there is no claim under Alabama law which could afford relief the Plaintiffs under these facts.

6. This Court does not have personal jurisdiction over Assurant pursuant to Fed. R. Civ. P. 12(b)(6), and as such, the claims against Assurant are due to be dismissed.

7. As further grounds in support of this motion to dismiss, Assurant relies upon its Memorandum of Law filed contemporaneously herewith.

WHEREFORE, premises considered, Assurant respectfully requests that the Court enter an order dismissing all claims against it in this action, with prejudice.

Respectfully submitted,

s/ John P. Browning

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document by Notice of Electronic Filing, or, if the party served does not participate in Notice of Electronic Filing, by U.S. First Class Mail, hand delivery, fax or email on this the 16th day of November, 2010:

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